IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 661 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI R SHAH

Versus

DAHYABHAI KALUBHAI SOLANKI

Appearance:

MR AMIT J SHAH for Petitioner

MR HARESH J TRIVEDI for Respondent No. 1

MR SJ DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/06/2000

ORAL JUDGEMENT

A Criminal Case being Criminal Case No.2065 of 1987 has been filed by the complainant, who is an Assistant Law Officer serving in the Gujarat Pollution

Control Board, against the present petitioners under the Water (Prevention and Control of Pollution) Act, 1974 (`the Act' for short) and more particularly under Sec.44 of the Act on 23-9-1987 directly before the Court of Chief Metropolitan Magistrate at Ahmedabad. On receiving the same, learned Chief Metropolitan Magistrate issued summons against the original accused. They appeared through advocate and on 23-4-1991, they submitted an application under Sec.49(1) of the Act praying for discharge on the ground that the complainant had not annexed sanction along with the complaint at the time of filing the complaint. Learned Chief Metropolitan Magistrate on receiving the said application passed the following order:

> "It is a matter of evidence and, therefore, application is ordered to be filed".

Against that order, present Criminal Revision Application has been filed by the petitioner.

2. I have heard Mr.Amit J. Shah, learned advocate for the petitioner, Mr.H.J.Trivedi, learned advocate for the respondent no.1 and Mr.S.J.Dave, learned APP for the respondent no.2-State.

3. I have gone through the complaint filed by the complainant in the year 1987 wherein it has been categorically stated that before filing the complaint, he has obtained sanction from the sanctioning authority under Sec.11(A) of the Act on 19-8-1987. So, facts remain that before filing the complaint, sanction has been obtained by the complainant. The point which was argued before this Court and Court below is that if sanction is not annexed along with the complaint, then what will be the legal position, whether complaint is required to be quashed and set aside and accused is required to be discharged only on that ground. Learned advocate for the respondents have relied upon a case reported in AIR 1986 Patna 133. It is a Full Bench judgment of Patna High Court on the similar point. It has been held in paragraphs 8 and 9 as under:

> "To require that the complaint itself must plead a rule of evidence or, in terms, spell out a deeming fiction provided by the statute therein is an argument bordering on hypertechnicality. One must always keep in mind the broader perspective that the administration of criminal law is more a matter of substance than of form

and should not be allowed to be obscured by pettifogging technicality."

4. I have also gone through the order passed by the court below. Looking to the criminal complaint, application submitted by the accused and order passed by the learned Chief Metropolitan Magistrate upon that application, it appears that the sanction has been obtained by the complainant well in advance, i.e. before filing the complaint, but it has not been annexed with the complaint. It is to be seen that the complaint is nothing but to put the criminal machinery in motion. Complaint has been filed with a specific averment directly into the Court by the complainant which prima-facie discloses the offence in question and, therefore, it is not necessary to annex the sanction along with the complaint. In my view, not annexing sanction along with the complaint is not a ground for discharging the accused from the offence at this stage because complaint itself specifically shows that the sanction has been obtained before filing the complaint.

5. In view of the above facts and circumstances, this Criminal Revision Application is required to be rejected and hence, it is rejected. Rule is discharged. Interim relief granted earlier is hereby vacated.

6. This being a very old matter, I hope that the learned Chief Judicial Magistrate, Ahmedabad will proceed further in the matter keeping in mind the above facts.

(R.P.DHOLAKIA,J.)

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